IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

THURSDAY, THE 13TH DECEMBER 2007 / 22ND AGRAHAYANA 1929

MFA.No. 231 of 2001()

OP.1110/1995 of MACT, PALA
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APPELLANT:

V.PAVITHRAN, PERUMPALLY HOUSE,
ALTHARAMOOD P.O.,
ALAMCODE (VIA), THIRUVANANTHAPURAM.

BY ADV. SRI.RAJEEV V.KURUP

RESPONDENTS:
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1. M/S.SIRAF, TRANSPORT NO.3,
S.A.RAHIM STREET, PERIYAKULAM 626 501.

2. P.THANKAVELU, S/O.PARATTAYAM,
C/O.RAHIM TRANSPORT VEDAGARAI,
PERIYAKULAM.

3. THE NEW INDIA ASSURANCE COMPANY LTD.,
REPRESENTED BY THE BRANCH MANAGER,
NEW INDIA ASSURANCE CO.LTD., 853/1,
NEHRUJI ROAD,
THENI - 626 531.

FOR R3 ADV. SRI.THOMAS MATHEW NELLIMOOTTIL

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 13/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

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M.F.A.No.231 of 2001

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Dated this the 13th day of December, 2007

J U D G M E N T

J.B.Koshy, J.

The appellant met with an accident and he claimed a compensation amount of Rs.6,98,300/-. The Motor Accident Claims Tribunal awarded Rs.2,47,500/- and found that the accident occurred due to the negligence of the driver of the vehicle insured by the third respondent Insurance Company. The only dispute is with regard to the amount of compensation awarded. He claimed that he was earning Rs.1800/- per month as provisional conductor in K.S.R.T.C. He also stated that all provisional conductors were regularised subsequently. Ext.A27 shows that claimant was also subsequently regularised. Accident occurred in 1993. The Tribunal has accepted the above amount as his monthly income. With regard to the injuries sustained, Ext.A2 is the wound certificate which shows that he had the following injuries:-

"1. Lacerated wound 10x3x2 cm obliquely placed over the front and sides of right ankle. Heal cap loose-ankle joint open.

2. Bilateral public rami fracture with rupture urethra.

This document further shows that the injured was examined at 2 a.m on 9.1.93."

Diagnosis noted is struddle fracture pelvis with urethral rupture with open ankle injury. Ext.A7 further shows that pelvis rupture was explored and realignment of posterior urethra at Kottayam Medical College. Hip spica was given for fractured pelvis. The injured was admitted in the Elite Mission hospital for severe lower abdominal pain and was treated symptomatically and pain was relieved. Exts.A8 to A11 give details of further treatment. Ext.A20 shows that it was followed by ayurvedic treatment. Various medical certificates were produced to show that the urethral stricture sustained by the injured petitioner is a permanent disability and he needs life long urethral care. The doctor fixed the percentage of the disability at approximately 20%. According to the petitioner, he was unconscious for about two days and he was treated as in patient for 38 days. He was also put under plaster cast from neck to the knee.

2. The Tribunal did not grant compensation on scientific basis but awarded Rs.75,000/- for both continuing and permanent disability and, Rs.40,000/- as compensation for loss of earning power; together Rs.1,15,000/- was awarded.

3. Since, it is submitted that he is totally disabled, we referred the matter to the Medical Board. The Medical Board certified that urological disability is only 20%. Even if 10% disability is separately added for Orthopaedic disability, even then compensation for disability and loss of earning together will be around Rs.1,15,000/- and that amount was also awarded. Further he was regularised as a conductor of K.S.R.T.C. Hence his salary was not affected except for the period he was under treatment. But he has to continue work with the permanent disability. We find no ground to enhance the award amount for disability and loss of earning power. With regard to the claim for medical expenses and future medical expenses etc., sufficient amount was awarded by the Tribunal. It is submitted that six months he was under treatment. Taking Rs.1,800/- as the monthly income, he has to be awarded Rs.10,800/- but the Tribunal has awarded.Rs.7,500/- for six months, that means that

Rs.3,300/- more. We are of the opinion that he is not entitled to any other amount. Hence, the additional amount of Rs.3,300/- now granted should be deposited by the third respondent Insurance Company with 8% interest from the date of application till its deposit, in addition to the amount already decreed by the tribunal. On deposit of the amount, appellant is entitled to withdraw the same.

With the above directions this appeal is partly allowed.

(J.B.KOSHY, J UDGE)

(K.HEMA, J UDGE

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J.B.KOSHY & K.HEMA, JJ.

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M.F.A.No.231 of 2001

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J U D G M E N T

13th December, 2007